

EXHIBIT 5

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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2010 DEC 30 PM 3:56

H. CHING
CLERK

Attorneys for Plaintiffs/Counterclaim Defendants/
Third-Party Defendants/Fourth-Party Defendants
BANK OF HAWAII, as agent for itself and for
CENTRAL PACIFIC BANK and FINANCE
FACTORS, LIMITED; BANK OF HAWAII;
CENTRAL PACIFIC BANK; and FINANCE
FACTORS, LIMITED

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

BANK OF HAWAII, as agent for itself and for
CENTRAL PACIFIC BANK and FINANCE
FACTORS, LIMITED; BANK OF HAWAII;
CENTRAL PACIFIC BANK; and FINANCE
FACTORS, LIMITED,

Plaintiffs,

v.

KE KAILANI DEVELOPMENT LLC, a
Hawaii limited liability company; MICHAEL
J. FUCHS, Individually; DIRECTOR OF
FINANCE, REAL PROPERTY DIVISION,
COUNTY OF HAWAII; KE KAILANI
COMMUNITY ASSOCIATION; THE
ASSOCIATION OF VILLA OWNERS OF
KE KAILANI; MAUNA LANI RESORT
ASSOCIATION; JOHN DOES 1-50;
JANE DOES 1-50; DOE PARTNERSHIPS
1-50; DOE CORPORATIONS 1-50; DOE
LIMITED LIABILITY COMPANIES 1-50;
DOE ENTITIES 1-50; AND DOE
GOVERNMENTAL UNITS 1-50,

Defendants.

CIVIL NO. 09-1-2523-10 BIA
(Foreclosure)

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUBSTITUTION OF
PARTIES, FILED DECEMBER 6, 2010**

NON-HEARING MOTION

No Trial Date Set

[Caption Continued on Next Page]

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

KE KAILANI DEVELOPMENT LLC, a
Hawaii limited liability company and
MICHAEL J. FUCHS, Individually,

Counterclaimants,

v.

BANK OF HAWAII, as agent for itself and
for CENTRAL PACIFIC BANK and
FINANCE FACTORS, LIMITED; BANK OF
HAWAII; CENTRAL PACIFIC BANK; and
FINANCE FACTORS, LIMITED; and DOES
A through J,

Counterclaim
Defendants,

KE KAILANI DEVELOPMENT LLC, a
Hawaii limited liability company and
MICHAEL J. FUCHS, Individually,

Third-Party Plaintiffs,

v.

MARY MILES MORRISON, Trustee under
the Mary Miles Morrison Trust dated
October 2, 1986,

Third-Party Defendant,

and

ASSOCIATION OF VILLA OWNERS OF KE
KAILANI; KE KAILANI COMMUNITY
ASSOCIATION; BENJAMIN R.
JACOBSON; ROBERT BATINOVICH;
STEPHEN B. and SUSAN L. METTER;
HARRY and BRENDA MITTELMAN;
UTALY, LLC; GORDON E. and BETTY I.
MOORE, Trustees; ROY and ROSANN
TANAKA; MICHAEL G. and LINDA E.
MUHONEN; MICHAEL O. HALE; BARRY
and CAROLYN SHAMES, Trustees;
KATONAH DEVELOPMENT LLC; DAVID
R. and HE GIN RUCH; NORTHERN TRUST
CORPORATION; BANK OF HAWAII, as
agent for itself and for CENTRAL PACIFIC

[Caption Continued on Next Page]

BANK and FINANCE FACTORS, LIMITED;
BANK OF HAWAII; CENTRAL PACIFIC
BANK; and FINANCE FACTORS, LIMITED;
DISPUTE PREVENTION AND
RESOLUTION; and DOES K through R,

Third-Party Nominal
Defendants,

KE KAILANI DEVELOPMENT LLC, a
Hawaii limited liability company and
MICHAEL J. FUCHS, Individually,

Fourth-Party Plaintiffs,

v.

MARY MILES MORRISON, Trustee;
BENJAMIN R. JACOBSON; NORTHERN
TRUST CORPORATION; BANK OF
HAWAII, as agent for itself and for
CENTRAL PACIFIC BANK and FINANCE
FACTORS, LIMITED; BANK OF HAWAII;
CENTRAL PACIFIC BANK; and FINANCE
FACTORS,

Fourth-Party Defendants,

and

ASSOCIATION OF VILLA OWNERS OF KE
KAILANI; KE KAILANI COMMUNITY
ASSOCIATION; STEPHEN B. and SUSAN
L. METTER; HARRY and BRENDA
MITTELMAN; UTALY, LLC; GORDON E.
and BETTY I. MOORE, Trustees; ROY and
ROSANN TANAKA; MICHAEL G. and
LINDA E. MUHONEN; MICHAEL O.
HALE; BARRY and CAROLYN SHAMES,
Trustees; KATONAH DEVELOPMENT LLC;
DAVID R. and HE GIN RUCH; and DOES S
through Z,

Fourth-Party Nominal
Defendants.

No Trial Date Set

**ORDER GRANTING PLAINTIFFS' MOTION FOR
SUBSTITUTION OF PARTIES, FILED DECEMBER 6, 2010**

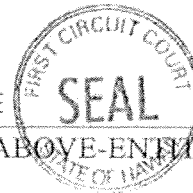
Plaintiffs' Motion for Substitution of Parties, filed on December 6, 2010 (the "Motion"), came on before the Honorable Bert I. Ayabe as a non-hearing motion.

The Court having reviewed Plaintiffs' Motion and being duly advised of the record and file herein, and there being no opposition,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Substitution of Parties Filed December 6, 2010, is GRANTED, and the caption in this action shall be modified accordingly.

DATED: Honolulu, Hawaii, DEC 30 2010.

BERT I. AYABE
JUDGE OF THE ABOVE-ENTITLED COURT



Bank of Hawaii, et. al. vs. Ke Kailani Development LLC, et al.; Civ. No. 09-1-2523-10 BIA;
First Circuit; State of Hawaii; ORDER GRANTING PLAINTIFFS' MOTION FOR
SUBSTITUTION OF PARTIES, FILED DECEMBER 6, 2010.

EXHIBIT 6

HD 410 P
DEC 30 2010

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2010 DEC 30 PM 3:29

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Attorneys for Defendants, Counterclaimants,
Third-Party Plaintiffs, Fourth-Party Plaintiffs and
Cross-Claim Defendants Ke Kailani Development
LLC and Michael J. Fuchs, and Third-Party
Cross-Claimant Benjamin R. Jacobson

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

BANK OF HAWAII, as agent for itself and
for CENTRAL PACIFIC BANK and
FINANCE FACTORS, LIMITED; BANK OF
HAWAII; CENTRAL PACIFIC BANK; and
FINANCE FACTORS, LIMITED,

Plaintiffs,

vs.

KE KAILANI DEVELOPMENT LLC, a
Hawaii limited liability company; MICHAEL
J. FUCHS, Individually; DIRECTOR OF
FINANCE, REAL PROPERTY DIVISION,
COUNTY OF HAWAII; KE KAILANI
COMMUNITY ASSOCIATION; THE
ASSOCIATION OF VILLA OWNERS OF
KE KAILANI; MAUNA LANI RESORT
ASSOCIATION; JOHN DOES 1-50; JANE
DOES 1-50; DOE PARTNERSHIPS 1-50;
DOE CORPORATIONS 1-50; DOE
LIMITED LIABILITY COMPANIES 1-50;
DOE ENTITIES 1-50; AND DOE
GOVERNMENTAL UNITS 1-50,

Defendants.

CIVIL NO. 09-1-2523-10 BIA
(Foreclosure)

NOTICE OF APPEAL TO THE HAWAII
INTERMEDIATE COURT OF APPEALS
OF THE SEPTEMBER 1, 2010 (1)
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND DECREE OF
FORECLOSURE FILED APRIL 22, 2010,
AND (2) JUDGMENT, AND (3) ORDER
GRANTING PLAINTIFFS/
COUNTERCLAIM DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT,
ON COUNTERCLAIM FILED
DECEMBER 23, 2009, AND (4)
JUDGMENT; EXHIBITS 1 THROUGH 4;
CERTIFICATE OF SERVICE

(CAPTION CONTINUED ON NEXT PAGE)

KE KAILANI DEVELOPMENT LLC, a
Hawaii limited liability company and
MICHAEL J. FUCHS, individually,

Counterclaimants,

vs.

BANK OF HAWAII, as agent for itself and
for CENTRAL PACIFIC BANK and
FINANCE FACTORS, LIMITED; BANK OF
HAWAII; CENTRAL PACIFIC BANK;
FINANCE FACTORS, LIMITED; and
DOES A through J,

Counterclaim
Defendants.

KE KAILANI DEVELOPMENT LLC, a
Hawaii limited liability company and
MICHAEL J. FUCHS, individually,

Third-Party Plaintiffs,

vs.

MARY MILES MORRISON, Trustee under
the Mary Miles Morrison Trust dated
October 2, 1986,

Third-Party Defendant,

and

ASSOCIATION OF VILLA OWNERS OF
KE KAILANI; KE KAILANI COMMUNITY
ASSOCIATION; BENJAMIN R.
JACOBSON; ROBERT BATINOVICH;
STEPHEN B. and SUSAN L. METTER;
HARRY and BRENDA MITTELMAN;
UTALY, LLC; GORDON E. and BETTY I.
MOORE, Trustees; ROY and ROSANN
TANAKA; MICHAEL G. and LINDA E.
MUHONEN; MICHAEL O. HALE; BARRY
and CAROLYN SHAMES, Trustees;
KATONAH DEVELOPMENT LLC; DAVID
R. and HE GIN RUCH; NORTHERN
TRUST CORPORATION; BANK OF
HAWAII, as agent for itself and for
CENTRAL PACIFIC BANK and FINANCE
FACTORS, LIMITED; BANK OF HAWAII;
CENTRAL PACIFIC BANK; FINANCE

(CAPTION CONTINUED ON NEXT PAGE)

FACTORS, LIMITED; DISPUTE
PREVENTION AND RESOLUTION; and
DOES K through R,

Third-Party Nominal
Defendants.

KE KAILANI DEVELOPMENT LLC, a
Hawaii limited liability company and
MICHAEL J. FUCHS, individually,

Fourth-Party Plaintiffs,

vs.

MARY MILES MORRISON, Trustee;
BENJAMIN R. JACOBSON; NORTHERN
TRUST CORPORATION; BANK OF
HAWAII, as agent for itself and for
CENTRAL PACIFIC BANK and FINANCE
FACTORS, LIMITED; BANK OF HAWAII;
CENTRAL PACIFIC BANK; and FINANCE
FACTORS, LIMITED,

Fourth-Party Defendants,

and

ASSOCIATION OF VILLA OWNERS OF
KE KAILANI; KE KAILANI COMMUNITY
ASSOCIATION; STEPHEN B. and SUSAN
L. METTER; HARRY and BRENDA
MITTELMAN; UTALY, LLC; GORDON E.
and BETTY I. MOORE, Trustees; ROY
and ROSANN TANAKA; MICHAEL G. and
LINDA E. MUHONEN; MICHAEL O.
HALE; BARRY and CAROLYN SHAMES,
Trustees; KATONAH DEVELOPMENT
LLC; DAVID R. and HE GIN RUCH; and
DOES S through Z,

Fourth-Party Nominal
Defendants.

No Trial Date Set.

NOTICE OF APPEAL TO THE HAWAII INTERMEDIATE COURT OF APPEALS OF
THE SEPTEMBER 1, 2010 (1) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND
DECREE OF FORECLOSURE FILED APRIL 22, 2010, AND (2) JUDGMENT, AND (3)
ORDER GRANTING PLAINTIFFS/COUNTERCLAIM DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, ON COUNTERCLAIM FILED DECEMBER 23, 2009, AND
(4) JUDGMENT

COME NOW Defendants, Counterclaimants, Third-Party Plaintiffs, Fourth-Party Plaintiffs and Cross-Claim Defendants Ke Kailani Development LLC and Michael J. Fuchs, by and through their undersigned attorneys, and pursuant to Section 641-1 of the Hawaii Revised Statutes, Rule 54(b) and Rule 58 of the Hawaii Rules of Civil Procedure, and Rule 4(a)(3) of the Hawaii Rules of Appellate Procedure, hereby appeal to the Intermediate Court of Appeals of the State of Hawaii from the following decisions, orders, and/or judgments, and from all subsidiary final, interlocutory, amendatory, and/or evidentiary rulings, orders, decisions, decrees and judgments of whatever kind and degree entered below heretofore and hereinafter:*


(1) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DECREE OF FORECLOSURE FILED APRIL 22, 2010, filed September 1, 2010;

(2) JUDGMENT, filed September 1, 2010;

(3) ORDER GRANTING PLAINTIFFS/COUNTERCLAIM DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, ON COUNTERCLAIM FILED DECEMBER 23, 2009, filed September 1, 2010; and

(4) JUDGMENT, filed September 1, 2010.

DATED: Honolulu, Hawaii; December 30, 2010.



GARY VICTOR DUBIN
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FREDERICK J. ARENSMEYER
BENJAMIN R. BROWER
Attorneys for Defendants/
Counterclaimants/Third-Party
Plaintiffs/Fourth-Party Plaintiffs
Ke Kailani Development LLC
and Michael J. Fuchs, and
Third-Party Cross-Claimant
Benjamin R. Jacobson

* Defendants, Counterclaimants, Third-Party Plaintiffs, Fourth-Party Plaintiffs and Cross-Claim Defendants Ke Kailani Development LLC and Michael J. Fuchs, by and through their undersigned attorneys, filed a timely post-judgment motion for reconsideration of the above-referenced decisions on September 13, 2010 (weekend excluded in the ten-day computation), which motion for reconsideration was heard on October 5, 2010, and denied by Minute Order entered on October 6, 2010.

However, although Plaintiffs' counsel submitted a proposed Order to the Court and filed on October 25, 2010 a notice of that submission, the Court has failed to enter a written order denying the motion for reconsideration.

Pursuant to Rule 4(a)(3) of the Hawaii Rules of Appellate Procedure, when a timely post-judgment motion is filed, the time to file a notice of appeal is extended until thirty days after the entry of a written order disposing of the post-judgment motion; and where no written order disposing of the post-judgment motion is filed, as in this case, the failure of the Court to enter a written order upon the record within ninety days after the date of the post-judgment motion was filed constitutes a denial of the post-judgment motion.

Hence, the motion for reconsideration having been filed on September 13, 2010 and not disposed of by written motion within ninety days (by December 12, 2010), the motion for reconsideration is deemed denied on December 12, 2010, extending the date for the filing of a notice of appeal for thirty days (by January 11, 2010). Therefore, the filing of this notice of appeal on December 30, 2010 is deemed timely.

Plaintiffs' counsel prepared and the Court entered an Amended Judgment on November 15, 2010 which provides finality to certain additional orders and judgments involving additional parties not here being appealed, but which appears confusingly to also restate, duplicate, and repeat therein Plaintiffs' four, earlier-filed orders and judgments being here appealed, clearly entered in violation not only of the post-judgment time requirements of Rule 59(b) of the Hawaii Rules of Civil Procedure, but also the decision of the Hawaii Supreme Court in Wong v. Wong, 79 Haw. 26 (1995) denying our lower courts authority to in any way modify or alter the timing requirements set forth in Rule 59(e) of the Hawaii Rules of Civil Procedure and the Hawaii Rules of Appellate Procedure.